



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0296]

RIN 1625-AA11

Regulated Navigation Area; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is proposing to establish a permanent regulated navigation area for certain waters of Lake Washington. The regulated navigation area is intended to protect personnel and vessels from potential hazards created by excessive vessel wake prior to and following high traffic Seafair events.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0296 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management, Coast Guard; telephone 206-217-6051, SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard was notified by the Mercer Island Police Department of hazardous conditions associated with increased vessel and swimmer congestion after high traffic Seafair marine events, which can make routine navigation for persons and vessels unsafe. The Seafair event draws an extraordinary amount of boaters and persons to the waterway to observe several high traffic events, such as the Seafair Hydroplane Races and Seafair Air Shows. The wakes created by transiting vessels near the vicinity of vessels moored to the log boom during high traffic events pose a safety concern to vessels and swimmers in the area. Coast Guard action is needed to restrict vessel movement prior to and after Seafair events where significant marine traffic endanger the safety of swimmers and vessels proximate to the log boom.

In response, on May 28, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area; Lake Washington, Seattle, WA 84 FR 24418. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulated navigation area. During the comment period that ended June 27, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Coast Guard Thirteenth District Commander has determined that there are potential hazards associated with Seafair activities, which usually occur on Lake Washington

during the last week of July and the first two weeks of August. The purpose of this rule is to ensure safety of vessels and the navigable waters in the regulated navigation area prior to and after Seafair activities.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received no comments on our NPRM published May 28, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The regulated navigation area will cover all navigable waters within Lake Washington south of the Interstate 90 floating Bridge and north of a line between Bailey Peninsula and Mercer Island. The duration of the regulated navigation area is intended to protect personnel and vessels in these navigable waters from excessive wake associated with vessels before and after high traffic Seafair events. Vessels transiting the area will be required to create minimum wake, at speeds of 7 miles per hour or less, unless a higher minimum speed is necessary to maintain bare steerageway. Enforcement periods for this rule will occur daily prior to and immediately following Seafair events.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory

action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time-of-day of the regulated navigation area. Vessel traffic will be able to transit through the regulated navigation area, and the regulation will only impact a small designated area of Lake Washington for less than four days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated navigation area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area enforced annually for a total of less than 4 days that would restrict vessel speed. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1341 before the undesignated center heading “Fourteenth Coast Guard District” to read as follows:

§ 165.1341 Regulated Navigation Area; Lake Washington, Seattle, WA.

(a) *Location.* The following area is a regulated navigation area: All waters of Lake Washington south of the Interstate 90 Floating West Bound Bridge and north of the points between Bailey Peninsula at 47° 33’ 14.4” N, 122° 14’ 47.3” W and Mercer Island at 47° 33’ 24.5” N, 122° 13’ 52.5” W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer

operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the regulated navigation zone.

(c) *Regulations.* All vessels and persons transiting the regulated navigation area described in paragraph (a) of this section must proceed at a speed which creates minimum wake, 7 miles per hour or less, unless a higher minimum speed is necessary to maintain bare steerageway.

(d) *Enforcement periods.* This section will be enforced annually immediately before and after Seafair events which usually occurs during the last week in July and the first two weeks of August. The event will be one week or less in duration and the specific dates and times of the enforcement periods will be published in a notice of enforcement in the *Federal Register*.

Dated: September 26, 2019.

A. J. Vogt,
RADM, U.S. Coast Guard,
Commander, Thirteenth Coast Guard District.
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